

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

CAROL SANDIFER AND FELIX SANDIFER, Individually
and as the Wrongful Death Heirs and Beneficiaries of
Norma Sandifer, Deceased, and THE ESTATE OF
NORMA SANDIFER, DECEASED

PLAINTIFFS

V.

NO. 3:22-cv-10-KHJ-MTP

BRANDON NURSING AND REHABILITATION
CENTER, LLC, and JOHN DOE

DEFENDANTS

NOTICE OF REMOVAL

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF MISSISSIPPI, NORTHERN DIVISION

Becky Boyd, Clerk
CIRCUIT COURT OF RANKIN COUNTY, MISSISSIPPI
P.O. Box 1599
Brandon, Mississippi 39043

Carroll Rhodes
LAW OFFICES OF CARROLL RHODES
Post Office Box 588
Hazlehurst, Mississippi 39083

ATTORNEY FOR PLAINTIFFS

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1441 and 1446, Defendant
Brandon Nursing and Rehabilitation Center, LLC ("Brandon") files this Notice of Removal of
the civil action styled *Carol Sandifer and Felix Sandifer, Individually and as the Wrongful Death
Heirs and Beneficiaries of Norma Sandifer, Deceased, and the Estate of Norma Sandifer,
deceased v. Brandon Nursing and Rehabilitation Center, LLC*; Cause No. 61CI1:21-cv-00215-
JA, from the Circuit Court of Rankin County, Mississippi, to the United States District Court for

the Southern District of Mississippi, Northern Division. In support of this Notice, Brandon states the following:

1. Plaintiffs Carol Sandifer and Felix Sandifer filed this medical negligence action in the Circuit Court of Rankin County Mississippi, on October 18, 2021. The lawsuit arises out of the care and treatment provided to Norma Sandifer while a resident of Brandon. According to the Complaint, Ms. Sandifer suffered injuries as a result of Brandon's alleged negligence.

2. Plaintiffs served Brandon with a copy of a Summons and Complaint on December 8, 2021. *See* Exhibit A. This Notice of Removal is filed within thirty days of receipt of the Summons and Complaint and is thus timely under 28 U.S.C. § 1446.

3. Venue is proper in the United States District Court for the Southern District of Mississippi, Northern Division because that is the district in which the state court action was filed. *See* 28 U.S.C. §§ 1446(a), 1446(b)(1).

4. This Court has original jurisdiction over this action—there is complete diversity of citizenship between Plaintiffs and Defendant and more than \$75,000 is in controversy, exclusive of interest and costs. *See* 28 U.S.C. § 1332.

5. Plaintiffs claim that Brandon caused Ms. Sandifer to suffer “physical injury and pain, emotional distress, loss of enjoyment of life,” and disfigurement, and they seek damages for medical and funeral expenses in addition to wrongful death damages. *See* Complaint at ¶ 50. Such claims for alleged serious and permanent injuries support a finding that the amount in controversy exceeds \$75,000.00. *Gebbia v. Wal-Mart Stores, Inc.*, 233 F.3d 880, 883 (5th Cir. 2000) (finding amount in controversy to exceed \$75,000 as plaintiff sought damages for medical expenses, physical pain and suffering, loss of wages and permanent disability and disfigurement for injuries sustained after falling in defendant’s store); *Irons v. Glaxo Wellcome, Inc.*, 2006 WL

1272797, at *2 (S.D. Miss. May 9, 2006) (citing *Gebbia* and holding that amount in controversy requirement met based on plaintiff's claims for medical expenses, lost wages, physical pain and suffering and mental anguish arising from use of defendant's product). Additionally, Plaintiff's counsel sent a demand letter contending Plaintiff's damages total \$2,500,000.00, which far exceeds the jurisdictional minimum.

6. Diversity of citizenship exists because Plaintiffs are citizens of Mississippi, and Brandon is not a citizen of Mississippi. As set forth in detail below, Brandon Nursing and Rehabilitation Center, LLC, is a Mississippi limited liability company whose members are all citizens of the State of New York. Therefore, Brandon is a citizen of New York, not Mississippi. *See Harvey v. Grey Wolf Drilling Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008) (holding that the citizenship of a LLC is that of all its members).

7. Brandon Nursing and Rehabilitation Center, LLC's members are D&N, LLC, and DTD HC, LLC. D&N, LLC, and DTD HC, LLC, are New York limited liability companies. D&N, LLC's members are Norbert A. Bennett, the Norbert A. Bennett Children's Trust, and the Norbert A. Bennett Grand-Children's Trust. Mr. Bennett is a citizen of New York. The Norbert A. Bennett Children's Trust and the Norbert A. Bennett Grand-Children's Trust are traditional trusts. The trustee of the Norbert A. Bennett Children's Trust is Ronald Bennett, a citizen of New York, and the trustee of the Norbert A. Bennett Grand-Children's Trust is also Ronald Bennett. *See Mullins v. TestAmerica, Inc.*, 564 F.3d 386, 397 n. 6 (5th Cir. 2009) (citing *Navarro Savs. Ass'n v. Lee*, 446 U.S. 458, 464 (1980) (holding that the citizenship of a trust is that of its trustee)).

8. DTD HC, LLC's members are Donald T. Denz and the Donald T. Denz Irrevocable Trust. Mr. Denz is a citizen of the State of New York. The Donald T. Denz

Irrevocable Trust is a traditional trust, and the trustee of the Donald T. Denz Irrevocable Trust is Martin J. Clifford, a citizen of New York.

9. In accordance with 28 U.S.C. § 1446(a), Brandon has provided notice to Plaintiff by mailing Plaintiff's counsel a copy of this Notice and the state court Notice of Filing of Notice of Removal. Brandon has also provided notice to the Clerk of Court for the Circuit Court of Rankin County, Mississippi, through the filing of this Notice and the Notice of Filing of Notice of Removal into the record of the state court action. *See* Exhibit B.

10. The allegations of this Notice are true and correct, and as such, this cause of action is removable to the United States District Court for the Southern District of Mississippi, Northern Division.

This the 6th day of January 2022.

Respectfully submitted,

BRANDON NURSING AND
REHABILITATION CENTER, LLC

By Its Attorneys,

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s/ Clay Gunn

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document with the Clerk of the Court using the Court's electronic filing system, which sent notification of such filing to all counsel of record, including the following:

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ATTORNEY FOR PLAINTIFFS

THIS the 6th day of January 2022.

s/ Clay Gunn

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